

Environmental Law Needs in the Pacific Island Region

Report to the Secretariat of the Pacific Regional Environment Programme

Ben Boer
Emeritus Professor in Environmental Law
Australian Centre for Climate Change and Environmental Law
Faculty of Law
University of Sydney
ben.boer@sydney.com.au
+ 61 2 9351 0465 +61 411 444 972

24 March 2010

Introduction

The main aim of this report is to set out a preliminary assessment of the current needs within SPREP in relation to assisting the development of environmental law in Pacific island countries, particularly in relation to legal responses to the impacts of climate change in the region, and to make a series of recommendations based on that assessment. The context of the assessment is that climate change has become one of the overarching priorities within SPREP, also recognizing SPREP's climate-change leadership role within the region.

A further aim was to discuss the implementation of an EU-funded Multilateral Environmental Agreements (MEA) project from the point of view of training and capacity building in environmental law, noting that SPREP is the lead coordinating regional agency for the coordination of capacity building for MEA implementation.

1. Preparation of a SPREP Strategy on Environmental Law

SPREP has been involved in the development of regional instruments and national environmental in the Pacific region in the past two decades. The time has now come for the preparation of a long-term strategy on environmental law, in the context of the needs of member countries and strengthening the capacity of SPREP to better support Pacific island countries in this vital field.

It is recommended that:

- *A staged five year plan be prepared for strengthening environmental legislation at national level in the Pacific Island Countries (PICs). The development and implementation of such a strategy should include a "needs analysis" to be conducted in the region by means of a survey to ensure that all significant issues are canvassed. Such a survey could be administered as part of the updating of the reviews of environmental law and the Capacity Building workshops recommended below.*
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- *That a dedicated Environmental Law Office be established within SPREP to more clearly identify the central role of environmental law as a core function of the organization*
- *That in addition to the current legal officer position, two further legal officers be engaged, with funding for these two positions being generated from outside SPREP.*
- *The legal work involved in advising SPREP on matters of a corporate or administrative nature (corporate law, tax law, contracts law, staff regulations etc.) should be separated from the legal work involving environmental matters.*
- *An internal staff development seminar be conducted within SPREP by the Legal Officer to inform all staff of the linkages of their programs to the area of environmental law.*
- *A series of interns and seconded lawyers be recruited, where possible from member countries, to be financed, as far as possible outside SPREP. Possibilities secondment from government departments, preferably from within the region, with the condition that such positions should be for a minimum of 12 months, preferably longer, to ensure that training time on the part of permanent staff is minimized.*

2. Updating reviews of environmental legislation

In the period 1992 to 1998, a total of 12 reviews of environmental legislation in Pacific island countries were carried out through the National Environmental Management Strategies (NEMS) project. These reviews were funded by a number of organizations, including the United Nations Environment Program (UNEP) and the International Union for the Conservation of Nature (IUCN), with infrastructure support from SPREP, the Australian Centre for Environmental Law (now known as the Australian Centre for Climate and Environmental Law) and relevant member countries.

From discussions with SPREP officers and review of documents from the past two decades in relation to environmental law in the Pacific region, it appears necessary for the majority of the legislative reviews to be updated. Such updated reviews would include a consideration of any new legislation introduced over that period of time, as well as an analysis of whether this legislation continues to meet the new challenges, and in particular climate change, that now has the potential to impact on many Pacific Island Countries (PICs).

It is noted that a review of legislation was recently conducted for the Federated States of Micronesia by Dr. Justin Rose, Lecturer in Environmental Law at the University of the South Pacific (USP). The intention of that review was to update the original legislative review of environmental law carried out by Elizabeth Harding in 1992. A similar exercise focused on other PICs where legislative reviews were carried out in the 1990s is also highly desirable.

Given the priority attention to be given to climate change, reviewers could be given a specific task of assessing the current legislative frameworks from the point of view of the impacts of climate change on each country.

In addition, consideration should be given to conducting initial legislative reviews for several countries and territories that did not undergo a review in the early 1990s. These are Papua New Guinea, Nauru and all territories with the exception of Tokelau.

It is recommended that:

- *The reviews of environmental law conducted in the 1990s be updated and published*
- *Legislative reviews be initiated for Papua New Guinea, Nauru, New Caledonia French Polynesia, Wallis and Futuna, American Samoa, Guam and Northern Mariana Islands.*
- *The initial and updated reviews take into account in particular the need for legislative responses climate change adaptation and mitigation.*
- *The initial and updated reviews take into account the need to legislatively embed the multilateral environmental agreements to which the PICs have become party.*

3. Capacity-building workshops

It would be highly desirable to conduct a workshop similar to that conducted in 1992 (“Strengthening Environmental Legislation in the Pacific Region”) using similar methodology, including country reports and special assignments. Such a workshop could be used as the basis for input into the updating of all the legislative reviews referred to above.

Funding for the general workshop could be generated from a number of organizations, including those that funded the original workshop. In addition, the services of UNITAR could also be engaged.

Following such a workshop, further specific workshops could be planned, taking into account assessment of needs in specific countries, which could be the subject of an assessment at the first general workshop. It is noted that the European Union–UNEP-SPREP MEA Capacity Building Project currently underway includes funding for specific workshops on negotiation skills, improved MEA coordination and mainstreaming MEAs. The workshops suggested in the following recommendations could be combined with those planned under the EU-UNEP-SPREP project.

It is recommended that:

- *A workshop be conducted using a similar methodology to that of the November 1992 workshop, focusing on international and national environmental law issues of common interest to the region. It would be desirable to invite as many environmental lawyers and policy advisers from government and the non-government and private sectors of member PICs as are available, together with representatives of potential donors for future environmental law workshops. The overall topic for such a workshop could be the assessment of priority needs for environmental law, with a secondary focus being the implementation of MEAs at the national level*
- *A series of sub-regional and national workshops be conducted on specific topics. One or more client workshops could be conducted, which could then be replicated around the region. The following topics could be the subject of such workshops, either in combination or as single subject areas:*
 - *Climate change law*
 - *Compliance and enforcement of environmental law at national level with a particular focus on capacity constraints, and the overall governance and institutional structures of PICs*
 - *Environmental impact assessment law and policy*
 - *Pollution law*

- *Energy law*
- *Forestry law*
- *Marine law*
- *Fisheries law*
- *Protected areas law*
- *Mining law*
- *Water law*

Priorities for topic choice for subsequent workshops and training programmes could be generated as a specific task of the initial five-day workshop recommended above.

In relation to a workshop on compliance and enforcement, contact could be made with the Australasian Environmental Law Enforcement and Regulators Network (AELERT) as a source of trainers and possible sponsorship. Such a workshop could utilize the materials developed in the past two years by the IUCN Academy of Environmental Law with the support of UNEP. These materials will be made more widely available later in 2010.

In addition to experts from SPREP, presenters for workshops could be drawn from a range of organizations, including the USP Law School and other member universities of the IUCN Academy of Environmental Law, the IUCN Office in Fiji, as well as Oceania region members of the IUCN Commission on Environmental Law. For the compliance and enforcement workshop(s), presenters could also be recruited from the AELERT Network mentioned above.

4. Areas of environmental law that require more attention by SPREP

There are many areas of environmental law that are not specifically or sufficiently dealt with by SPREP at the present time. Nevertheless, these areas demand increasing attention, particularly in the light of climate change impacts and the development of relevant legislative frameworks. With more robust legal input from additional legal officers, SPREP could make some very significant contributions to the following areas:

- *National legislation on climate change impacts*; a number of countries around the world are now legislating with regard to mitigation and adaptation of the impacts of climate change. A range of lessons could be learned in the Pacific island region with respect to amending current environmental laws, as well fisheries and forests legislation to specifically address climate change matters.
- *Forestry law including the issue of illegal logging*; this is particularly important in relation to the emerging field REDD (Reducing Emissions from Deforestation and Degradation), especially relevant to the Melanesian countries, recognizing in particular the institutional and technical barriers to implementation.
- *Coastal law*: issues relating to land use planning on vulnerable coastlines needs also to be urgently addressed in a number of countries, particularly through integrated coastal zone management policies. Issues of overfishing also require legal attention.
- *Marine law/Law of the Sea issues*: there is increasing recognition that oceans are a significant carbon sink, which can be enhanced considerably by the encouragement all what is now becoming known as “marine forests.” This term refers to the use of the marine environment for the increased growth of seaweeds and sea grasses as part of bio-sequestration. There is no doubt a number of complex legal

considerations that need to be taken into account when implementing policies relating to marine forests.

- *Protected areas law:* There is now a major body of learning on protected areas law and policy, which has been enhanced by the recent work of the IUCN Environmental Law Centre, and members of the IUCN Commission on Environmental Law and the World Commission on Protected Areas. A major revision of the Protected Areas Legislation Guidelines, together with 12 cases studies will be published later in 2010, which will give significant guidance to legislators and legal drafters around the world. On the basis of the new Guidelines, SPREP could play a significant part in assisting PICs to further align their protected areas legislation, both for the marine and terrestrial environments.
- *Customary law and its accommodation or incorporation within national legislation:* in a number of PICs, customary rules continues to be utilized to restrict harvesting of all species of flora and fauna; customary law is recognized in some South Pacific island constitutions, but is not specifically recognized within environmental law and practice.
- *Energy law:* this is an increasingly important field, particularly given the need to reduce greenhouse gas emissions from fossil fuels in all countries around the world. The potential for renewable energy generation in PICs requires further investigation. Clearly, renewable energy installations such as wind, wave and solar facilities will require legislative frameworks to ensure adequate planning and environmental safeguards are in place. In addition, the setting of renewable energy targets and other greenhouse gas reduction strategies also requires legal attention.
- *Soil law:* this is an area of increasing importance to PICs, both in terms of continued agricultural production as well as the realization that soil is also a carbon sink.
- *Mining law:* while a number of PICs have enacted mining legislation, the environmental impact of mining in some jurisdictions requires more specific regulation
- *Water law;* the supply of water for residential, agricultural and industrial use in some countries is problematic. More adequate legislative provisions for clean drinking water in some jurisdictions is particularly important.

Discussions with SPREP Officers in February 2010

David Sheppard, Director
Kosi Latu, Deputy Director
Clark Peteru, Environmental Legal Advisor
Espen Ronneberg, Climate Change Advisor
Frank Wickham, (then) Capacity Development Advisor
Stuart Chape, Programme Manager, Island Ecosystems
Jeff Kinch, Coastal Management Advisor
Peter Murgatroyd, Information Resource Centre Manager
Seve Paeniu, Sustainable Development Advisor
Simpson Abraham, Sustainable Development Officer, FSM
Taito Nakalevu, Climate Change Advisor